IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL.O.P.NOs.31422,36254 and 36676 of 2004
AND CRL.M.P.Nos.11350 AND 11486 OF 2004.

CRL.O.P.Nos.31422 of 2004:

Mrs.Sashi Balasubramanian ... Petitioner

Vs.

State by
Superintendent of Police,
Central Bureau of Investigation,
(Economic Offences Wing),ACB,
Chennai. ... Respondent

Crl.O.P.No.36254 of 2004:

V.Rajpriyan ... Petitioner

vs.

The State by
the Inspector of Police,
Central Bureau of Investigation,
Economic offences Wing,
Rajaji Bhavan,
Besant Nagar, Chennai - 600090. ... Respondent

Crl.O.P.No.36676 of 2004:

Rajesh Bhansali ... Petitioner

vs.

The Union of India,
rep. by the Inspector of Police,

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CBI, Economic Offences Wing,
Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090 ... Respondent

Petitions filed under Section 482 of Cr.P.C seeking relief as stated therein.

* * *

For Petitioners : Mr.M.L.Joseph
(in Crl.O.P.No.31422 of 2004)
Mr.V.S.Venkatesh
(in Crl.O.P.No.36254 of 2004)
Mr.G.M.Syed Fasiuddin
(in Crl.O.P.No.36676 of 2004)

For respondents :Mr. N.Chandrasekaran
Spl.P.P. for CBI
(in all the above Crl.OPs)

COMMON ORDER

The above Criminal Original Petitions have been filed by the respective petitioners seeking to call for the records in C.C.No.34/99 and 35/99 pending on the file of the Court of IX Additional Sessions Judge (Special Judge for CBI Cases), Chennai and to quash the same.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that insofar as Criminal Original Petition No.31422 of 2004 is concerned, it comes to be seen that C.C.No.34 of 1999 has been filed against the petitioner and 6 others alleging that A1 to A7 entered into a criminal conspiracy to cheat the Government of India in pursuance of the said conspiracy, A2 applied for an advance licence under the duty exemption entitlement scheme without valid export orders and A3 forged the said licences and thus with connivance of A2 imported three consignments of man made fabrics using the forged advance licence with the connivance of A2, A5 and A6; that A7 helped in getting the said licence amended as man made cotton fabrics against the provisions of Import & Export Policy, 1992 - 1997; that thereafter A3 with connivance of A2 tampered the certificate by striking out the word "cotton" and A2 with connivance of A4 and A5 imported the consignment

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of man made fabrics by abusing their position as public servant and to make A2 get pecuniary advantage for which he was not entitled; that A2 falsely declared in the bill of entry; that the customs officials namely A4 and A5 allowed A2 to commit these offences and thereby according to the respondent all the above said persons committed the above said offences.

3. Insofar as Crl.O.P.No.36254 of 2004, is concerned, the petitioner has come forward to file the said petition to quash the proceedings pending in C.C.No.34/99 before the Court of IX Special Judge for CBI Cases, Chennai due to certain vital change in circumstances that have taken place pursuant to the order dated 29.4.2004 passed by this Court in Crl.O.P.Nos.20698 and 20699 of 2003, 4495 and 4498 of 2004 and Crl.R.C.Nos.618 and 619 of 2003; that the order passed by this Court has reached finality and the respondent has not preferred any Special Leave Petition before the Honourable Supreme Court of India challenging the order of this Court dated 29.4.2004 in Crl.O.P.Nos.20698 and 20699 of 2003, 4495 and 4498 of 2004 and Crl.R.C.Nos.618 and 619 of 2003; that the petitioner further submits that in obedience to the orders passed by this Court quashing the charges against the petitioners in the above mentioned Original Petition and Revision Petition, the learned IX Additional Special Judge for CBI Cases, City Civil Court, Chennai has discharged all the petitioners including that of the public servants; that the petitioner submits that charges were framed against the Accused 1 to 7 for offences u/s.120-B, 420, 467, 468, 471 and 13(2) read with Section 1391)(d) of the Prevention of Corruption Act, 1988 and Sections 132 and 135 of the Customs Act, 1962; that the charges were framed against the petitioner under Sec.120B read with Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 alone; that pursuant to the order of this Court, Accused 1 to 5 have been discharged and the proceedings initiated against them have been quashed; that the petitioner along with A6, Smt.Sashi Balasubramaniam and another higher officer of the same Department namely the Joint Director General of Foreign Trade are facing trial and five witnesses have been examined so far and the matter now stands adjourned to 19.11.2004 for further examination of the witnesses; that he has not been charged with any of the provisions of the IPC offences and Customs Act; that the main accused A1 to A5 have been discharged and the proceedings against them have been quashed

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and this Court has given a specific and categorical finding in its order dated 29.4.2004; and hence, the petitioner would come forward to plead that the said case pending against the petitioner may be quashed.

4. Insofar as Crl.O.P.No.36676 of 2004 is concerned, the petitioner has come forward to file the said petition submitting that the charge sheet before the Special Court was filed against five accused, the petitioner was arrayed as A4; that the first charge was against all the five accused under Sections 120B read with 420, 467, 468, 471 read with 468 IPC and 13(2) read with 13(1)(d) of PC Act and Sections 135 and 136 of Customs Act; that the second charge was under Section 420 IPC as against A3; that the third charge was against A1 and A3 under Section 468 IPC; that the fourth charge was against A1 and A3 under Section 471 IPC read with 468 IPC; that the fifth charge was against A2 and A3 under Section 467 IPC; that the sixth charge was against A2 and A4(the petitioner herein) under Section 420 IPC; that the seventh charge was against A1 to A3 under Section 135 of the Customs act; that the eighth charge was against A5 since he was a public servant, under Section 13(2) read with 13(1)(d) of the PC Act, 1988; that the ninth charge was under Section 136 of the Customs Act against A5 a public servant; that this Court by its common order dated 29.4.2004 quashed the entire proceedings as against them in C.C. No.35 of 1999 pending on the file of the IX Additional Special Judge for CBI Cases, Chennai; that the case against the petitioner is also liable to be quashed since the petitioner alone is left now in C.C.No.35 of 1999 for the reasons stated above and thus, the petitioner would come forward to plead that the case against him may be quashed.

5. Petitioner in Crl.O.P.No.31422 of 2004 is A5 while the petitioner in Crl.O.P.No.36254 of 2004 is A6 in C.C.No.34 of 1999 on the file of the Court of IX Additional Special Judge for CBI Cases, City Civil Court, Chennai and the petitioner in Crl.O.P.No.36676 of 2004 is A4 in C.C.No.35 of 1999 also on the file of the said Court. It comes to be seen from the documents placed on record that when some of the accused have filed similar criminal original petitions in Crl.O.P.Nos.20698/2003, 20699/2003, 4495 and 4498 of 2004 and Crl.R.C.Nos.618 and 619 of 2003, a learned single Judge of this Court, by the order dated 29.4.2004, has quashed the proceedings in respect of the said accused. Now, it is the

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case of the petitioners herein that when the proceedings against the main accused themselves have been quashed, no purpose would be served by keeping the said criminal cases pending against the petitioners and hence they would seek to quash the criminal proceedings against them also falling in line with the order of this Court dated 29.4.2004 passed in the above mentioned Crl.O.P.Nos.20698/2003 etc. batch.

6. A perusal of the common order passed by the learned single Judge of this Court in the above mentioned Crl.O.P.Nos.20698/2003 etc. batch, would reveal that the learned Judge has discussed the case of the prosecution in detail and charge-wise and quashed the proceedings insofar as the petitioners/accused therein are concerned.

7. To deal with the charges framed as against the petitioners in Crl.O.P.Nos.31422 and 36254 of 2004, who are respectively A.5 and A.6 in C.C.No.34 of 1999 before the Court below, they have been charged for the offences punishable under Sections 120-B r/w.420,467,468, 471 r/w.468 IPC and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 and Section 136 of the Customs Act along with the other accused.

8. The charge against these petitioners, along with other accused, is that all the accused joining hands with each other and conspiring together, have forged the Advance Licence No.2296863 dated 16.4.1993 by striking out the word 'cotton' in the description of import item and incorporated 'man-made cotton fabrics' in the licence and also forged the DEEC Certificates by striking out the word 'cotton' and imported the consignments of man-made fabrics at the port of Madras.

9. While dealing with this charge, the learned Judge would observe that:

> "All cases, which are the subject matter of both the charge sheets instituted on 12.4.1999, have been settled under the K.V.S. Scheme 1998. There is no dispute about this fact by the respondent. In fact, the stand of the respondent in the counter affidavit dated 16.10.2003 in Crl.O.P.No.20699 of 2003 in paragraph 4 is that "the authorities under the K.V.S.S. ought to have awaited the result of

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the investigation before passing any order under K.V.S.S." Hence, it follows that the declarations have been accepted by the competent authority, the duty has been paid and accepted and immunity granted. Therefore, the matter has to be treated as closed. The authorities were aware of the whole proceedings, yet the declaration was accepted and immunity granted. The allegation of loss of duty does not hold good any longer. The contention of the department that payment of 50% tax does not absolve criminal liability also goes against the purport and intent of K.V.S. Scheme. Once the declaration was made under the K.V.S. Scheme and accepted by the Government, the immunity was granted against prosecution unreservedly.

If the prosecution has been instituted prior to the filing of the declaration under Section 88 of the Scheme with respect to offences set out in the Scheme, the k.V.S. Scheme will not be extended and the immunity will not be granted. In other words, if prosecution is not filed on or before the filing of the declaration for the offences under the acts set out under Section 95(iii), the exclusion does not apply to the applicant and the prosecution cannot be instituted for offences under the Acts mentioned therein. The acts inter alia, which are mentioned therein will cover offences under Section 120-B and 420 IPC and also the Prevention of Corruption Act. It therefore follows that no prosecution under the Act mentioned in Section 95(iii) can be instituted after the filing of the declaration under Section 88 of the K.V.S. Scheme. Consequently, the accused cannot also be prosecuted under Sections 468 and 471 since Section 95(iii) does not deal with these offences."

10. Even regarding the charge that there was evasion of duty, the learned Judge would hold as follows:

".... Once the declaration made under the K.V.S.Scheme is accepted and the duty determined is paid, there is no question of evasion of duty thereafter and if the case cannot be dealt with under the provisions of the Customs Act, then it

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equally cannot be dealt with under any other enactment because the basic ingredients to establish the case of the prosecution is evasion of duty or cheating the Government of its duty. The duty has already been paid under the K.V.S.Scheme and accepted by the Government which gives immunity to the person who files the declaration. Hence, even on this ground, the charge of evasion of duty cannot be sustained and the whole case will have to fail. The contention of the prosecution that the question of forgery of documents will have to be gone into during trial does not have any basis, for in the trial proceedings, the issue which will have to be gone into is whether any such acts were committed and whether any loss of duty was caused thereby. The allegation in charge sheet is evasion of duty. When once the evasion of duty has been settled under the Scheme, all other issues become redundant."

11. Since the petitioners herein who are A.5 and A.6 in the case also stand on the same footing as that of the other accused, without any other specific charge against them, the observations made by the learned Judge in respect of the other accused, who are the prime accused in the case, would squarely apply to these petitioners also and thus they also become entitled to be discharged from the criminal proceedings.

12. So far as the petitioner in Crl.O.P.No.36676 of 2004, who is A.4 in C.C.No.35 of 1999, he has also been charged along with other accused for the offences under Sections 120-B r/w.420,467,468,471 r/w.468 IPC and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act and Sections 135 and 136 of the Customs Act and even regarding this petitioner, the observations made by the learned Judge, as extracted supra, would also be applicable to this petitioner since all other main accused have been discharged from the criminal proceedings.

13. For all the above discussions held, all the above criminal original petitions are entitled to be allowed and hence the following order:

In result,

(i) All the above criminal original petitions succeed and they are allowed.

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(ii) The criminal proceedings in C.C.No.34/99 pending on the file of the Court of IX Additional Sessions Judge (Special Judge for CBI Cases), Chennai are quashed insofar as the petitioners in Crl.O.P.Nos.31422 of 2004 and 36254 of 2004 are concerned.

(iii) The criminal proceedings in C.C.No.35/99 pending on the file of the Court of IX Additional Sessions Judge (Special Judge for CBI Cases) Chennai are quashed insofar as the petitioner in Crl.O.P.No.36676 of 2004 is concerned.

Consequently, Crl.M.P.Nos.11350 and 11486 of 2004 are closed.

Sd/

Asst.Registrar

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Sub Asst.Registrar

asvm/Rao

To

1. The IX Additional Sessions Judge
   (Special Judge for CBI Cases)
   Chennai.

2.The Superintendent of Police,
  CBI (Economic Offences Wing)
  ACB,Chennai.

3. The Inspector of Police,
   CBI, Economic Offences Wing,
   Rajaji Bhavan,
   Besant Nagar,
   Chennai - 600 090

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4. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.V.S.Venkatesh,Advocate SR.No.2274

+1cc to Mr.Syed Fasiuddin,Advocate SR.No.2275

+1cc to Mr.M.H.Joseph,Advocate SR.o.2191

SSV(CO)
kaa 03.03.05

Pre-delivery
Common Order in Crl.OP.Nos.31422, 36254 and 36676 of 2004

20.1.2005.

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